To: MIKE STONE, Point Foundation
From: LEE LEITNER, EARTH SMARTS DEVELOPMENT, Inc.
Date: 10/14/96
Re: License Agreement (what else?)

Dear Mike:

I received your FAX today. Thanks for your efforts on behalf of this venture. Below are our concerns regarding each item submitted by Point:

1. Fee for legal costs. We're sure your board won't be too surprised to hear that we do not agree to pay for Point's legal costs in getting this agreement worked out. Our reasoning is follows:

The name "Whole Earth" speaks to me personally in that it does very well to describe my vision of the project, and I am personally familiar with your various published works and appreciate them greatly. All of us at EARTH SMARTS DEVELOPMENT are also aware that a small percentage of the population may be familiar with the name and might have positive associations with the name that would benefit our projects. It is for these reasons that we have been willing to wait this long in trying to get a licensing agreement with Point while we continued to work on all the other aspects of starting up our business. However "Whole Earth" is *not* the only name that would work for our project, and we are by no means married to it. Furthermore the actual benefits to our business of using the name are intangible, and for all we know might be marginal at best. While we certainly hope to appeal to the environmentally- and socially-aware consumer, we will still depend on the vastly more numerous mainstream consumer for our success (and will hopefully help to enlighten them in the process, thereby turning them into the former consumer type).

Point Foundation, on the other hand, stands to gain signficant additional national exposure and (eventually) sums of money that might amount to tens of thousands of dollars annually as a result of this relationship. In otherwords, we feel that Point stands to gain more than we do by allowing the use of the "Whole Earth" name. To be clear we'd like to stress that we are willing to contribute substantially to Point as part of any licensing agreement because it is in our charter that we contribute significant sums to environmental and social causes, *not* because we are dependent on the use of the name).

We will have plenty of our own legal fees associated with this agreement. In that Point seems to stand to gain the most (especially regarding tangilbe, *measurable* gain), we feel that it should cover its own legal fees. (Please note that we were previously informed that one or more of Point's new board member were attorneys, so our impression is that your legal fees should be minimal at worst - unless these board members were actually intending to collect fees for activities benefiting the not-for-profit organization they serve).

2. Royalties. On balance we have no problems with this notion, and we would like to suggest the following language: *"EARTH SMARTS DEVELOPMENT will make an annual contribution to Point Foundation amounting to 2.5% of its annual after-tax profits, so long as said amount is no less than $1,000 and need not be more than $50,000".*

While, as mentioned previously, it is our specific intent to contribute a significant percentage of our profits to a variety of environmental and social organization, in general we do not want to be locked into specific amounts or specific organizations. Of course Point Foundation would be the exception to this rule, as you would be providing us an on-going service in the license of your name. But please, in deciding what sounds like a reasonable offer from us, consider that we would like to support *many* other entities besides Point Foundation.

Regarding setting an upper limit we picked the $50,000 figure arbitrarily. We'd like you to give us an idea of what that number should be, as we have no idea what your annual revenues and costs are. In doing so, we ask you to please consider what would be a *reasonable* amount for Point, and what would be *more* than enough, given the following considerations: 1) per the

paragraph above we'd like to be able to support many, many organizations and causes, and if your needs are being amply covered, we request that you allow us to provide more to others; and 2) while we'd like our constribution to you to be signficant to you, we do not feel that we should end up providing for you a majority of your annual revenues Please note also that the language "need not be more than..." gives EARTH SMARTS DEVELOPMENT the *option* of giving to Point larger amounts than the upper limit figure, but does not *require* us to if your needs are being met and other organizations have greater need of support.

We will only agree to have the royalties be based on a percentage of "profit", not "revenues". As a business we must be able to meet our expenses, even ncluding being able to set aside capital for future developments. Of course, it we are able to grow the business without undue burdens, Point will ultimately share the rewards of receiving a percentage of even larger profits.

The lower limit of $1,000 is in Point's best interest. It assures that EARTH SMARTS DEVELOPMENT does not do something insidious, such as raising the salaries of its executives in order to eat up revenues, diminish profits, and weasle out of its obligations to contribute to Point. While current ownership asserts that it would do no such thing, this would protect you in the event of a possible change of ownership years down the pike (while we would screen potential buyers carefully to prevent such things from happening, we could make no guaranties, so we would recommend this language, or something similar, to you). We request the $1000 figure at present because we are still seeking seed funding and this would liekly come directly out of our pockets during the first year or two. We would agree to have this lower limit raised to $5,000 once the first Whole Earth Mall has been completed and has reached a minimum of 50% occupancy.

3. Use of the name. It would be used as the name for "Whole Earth Mall"s. Our intent is to construct 10 such malls over a 15-year period around the nation. Each mall will be a collection of environment-oriented retail establishments and restaurants located together under one roof in a building that sets and example of how to build with respect for the environment. Most Whole Earth Malls will include office space to make more efficient use of the land and the structure (mutli-use facilities as such also have the environmental benefit of cutting down on transportation demands). Were appropriate, we might also add resdiential units, for the same environmental reasons as for office space.

Like most malls, the name will be used in signage on the building and/or at its entrance. Like any such business there would be brochures, business letters, print advertisements, radio and TV ads, etc. that would include the "Whole Earth Mall" name. The name would not be used for any other venture than these retail/commercial (and occassionally residential) developments.

Per our previous attempt at an agreement, we suggest that Point be credited in all printed materials (e.g. brochures and business letters) and print media advertisements (and we'll include the World Wide Web in that catagory) with a statement reading something to the effect of "The name "Whole Earth" is owned by the Point Foundation and is used by permission". For both practical and aesthetic reasons we request that such credit not be required on exterior signage, or in radio or television advertisements,

4. Exclusivity. We do request or require exclusive use of the "Whole Earth" name, except as pertains to projects that might be similar to ours. For other commercial real estate development projects, we might allow exceptions, but we at least request the right to first refusal. Per a previous FAX, we are again suggesting the following language: "*For the duration of this agreement, Point Foundation agrees not to permit the use of the "Whole Earth" name for any other retail or office development, or other commercial development or construction, without the express written consent of EARTH SMARTS DEVELOPMENT*"

Let me finally restate our position that we do not agree to pay any up-front fee for constructing an agreement, and we feel that the eventual royalties would more than make up for this supposed initial expense to Point. Mike, to be quite frank it is my opinion that Point would be shooting itself in the foot if it let the legal fees issue put an end to this process (unless of course you actually can't

afford to do this otherwise - which I would find puzzling if you do indeed have legal council serving on your board).

Thanks yet again, Mike, for all of the time you've spent on this project. I look forward to a speedy conclusion to this process.

Best Regards,

Lee Leitner